



## **COUNCIL ON ENVIRONMENTAL QUALITY**

### **40 CFR Part 1519**

### **RIN 0331-AA04**

### **Guidance Document Procedures Rescission**

**AGENCY:** Council on Environmental Quality.

**ACTION:** Final rule.

**SUMMARY:** On January 8, 2021, the Council on Environmental Quality (CEQ) issued a final rule to implement Executive Order (E.O.) 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents.” In accordance with E.O. 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation,” this final rule rescinds CEQ’s rule on guidance document procedures.

**DATES:** This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Amy B. Coyle, Deputy General Counsel, Council on Environmental Quality, 730 Jackson Place, NW, Washington, DC 20503, (202) 395–5750, [amy.b.coyle@ceq.eop.gov](mailto:amy.b.coyle@ceq.eop.gov).

**SUPPLEMENTARY INFORMATION:** E.O. 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents,” addressed the development, use, and public availability of agency guidance documents and required agencies to promulgate or update existing regulations setting forth their procedures for issuing guidance documents. 84 FR 55235 (Oct. 15, 2019). On January 8, 2021, CEQ issued a final rule, “Guidance Document Procedures” to implement E.O. 13891. 86 FR 1279. The final rule established 40 CFR part 1519 to establish guidance document procedures, procedures for the public to request withdrawal or modification of a guidance document, and procedures for significant guidance documents.

On January 20, 2021, President Biden issued E.O. 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation,” to revoke a number of Executive orders, including E.O. 13891, with harmful policies and directives that threaten to frustrate the Federal Government’s ability to confront the urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID-19) pandemic, economic recovery, racial justice, and climate change and to empower agencies to use appropriate regulatory tools to address these issues. 86 FR 7049 (Jan. 25, 2021). E.O. 13992 provides that “[t]o tackle these challenges effectively, [agencies] must be equipped with the flexibility to use robust regulatory action to address national priorities.” Section 3 of E.O. 13992 directs agencies to take steps to rescind any orders, rules, regulations, guidelines or policies, or portions thereof, implementing or enforcing the revoked Executive orders.

After review and consideration, CEQ has concluded that its rule on guidance documents deprives CEQ of necessary flexibility in determining when and how best to issue guidance based on particular facts and circumstances consistent with the policy directive in E.O. 13992. Therefore, CEQ is issuing this final rule to rescind its regulations at 40 CFR part 1519. As has been CEQ’s practice predating the part 1519 regulations, CEQ will continue to make guidance available to the public on its websites, including [www.nepa.gov](http://www.nepa.gov) and [www.sustainability.gov](http://www.sustainability.gov). Additionally, in accordance with M–09–13, “Guidance for Regulatory Review,”<sup>1</sup> the Office of Management and Budget will continue to review all CEQ actions and documents subject to the Office of Information and Regulatory Affairs review under E.O. 12866. These reviews include policy and guidance documents that OMB determines are significant.

## **Rulemaking Analyses and Notices**

### **A. Regulatory Procedures**

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<sup>1</sup> <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2009/m09-13.pdf>.

Under the Administrative Procedure Act, an agency may waive notice and comment procedures if an action is an interpretative rule, a general statement of policy, or a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). CEQ has determined this rule is a rule of “agency organization, procedure, or practice” and, therefore, CEQ is not required to engage in a notice and comment rulemaking process. Furthermore, because the rule is a procedural rule, rather than a substantive rule, it may be made effective immediately upon publication. *See* 5 U.S.C. 553(d).

#### **B. Regulatory Planning and Review (E.O. 12866 and E.O. 13563)**

E.O. 12866 provides that OIRA will review all significant rules. E.O. 13563 reaffirms the principles of E.O. 12866, calling for improvements in the Federal Government’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory objectives. OMB determined that this final rule does not meet the requirements for a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563, and therefore it was not subject to review.

#### **C. National Environmental Policy Act**

The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., (NEPA) requires Federal agencies in their decision-making processes to consider the environmental effects of their proposed actions, disclose those impacts, and involve the public. The Council on Environmental Quality (CEQ) oversees the implementation of NEPA, 42 U.S.C. 4342, and issued NEPA implementing regulations at 40 CFR parts 1500 through 1508, which set forth the procedures for agencies to comply with NEPA.

The CEQ regulations provide for three levels of NEPA review. For actions that are likely to have significant environmental effects, agencies must prepare an environmental impact statement (EIS). *See* 40 CFR part 1502. Agencies also can identify in their agency NEPA procedures categories of actions that normally do not have

significant environmental effects, and then apply these categorical exclusions (CEs) to individual actions after considering whether there are extraordinary circumstances present that preclude the application of the CE. *See* 40 CFR 1501.4. Finally, for those actions that are not likely to have significant environmental effects and where the agency does not have an established CE, or for actions where the significance of the effects is unknown, agencies prepare an environmental assessment (EA) to comply with NEPA. *See* 40 CFR 1501.5. Because CEQ has not established CEs for its actions, it has prepared this EA to comply with NEPA for this rulemaking.

### Purpose and Need

As set forth in the supplemental information section of this final rule, the purpose and need is to take action to comply with E.O. 13992, which revoked E.O. 13891 and directed agencies to take steps to rescind any regulations implementing the E.O.

### Proposed Action and Alternatives

The proposed action is to revoke 40 CFR part 1519, which CEQ promulgated to implement E.O. 13891. The no action alternative is to retain part 1519, which sets forth CEQ's procedures for the development and issuance of guidance documents consistent with the direction in E.O. 13891 and the Office of Management and Budget memorandum M-20-02, "Guidance Implementing Executive Order 13891, Titled 'Promoting the Rule of Law Through Improved Agency Guidance Documents.'"<sup>2</sup> These procedures define "guidance document" and required elements, including a title, document identification number, and date. Part 1519 also requires that all guidance documents contain a legal disclaimer, identification of any guidance document it revises or replaces, a summary of the guidance subject matter, identification of the activities to which and the persons to whom the guidance applies, and citations to relevant statutory and regulatory provisions. The procedures also require review by CEQ's Office of the

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<sup>2</sup> <https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf>.

General Counsel and posting of documents on CEQ's website. Finally, the regulations provide a procedure for the public to request withdrawal or modification of a guidance document.

### Environmental Effects

Both the proposed action and the no action alternative likely would result in minimal environmental effects. CEQ issues guidance electronically by posting the documents online and emailing it to Federal agency contacts; therefore, to the extent this rulemaking would have any environmental effects, they would be on energy use by CEQ's IT systems. However, this rulemaking neither increases or decreases the volume of CEQ's guidance, but rather specifies the content and format of certain guidance documents. The proposed action gives CEQ increased flexibility in determining when and how best to issue guidance based on particular facts and circumstances consistent with the policy directive in E.O. 13992. Further, as noted in the final rule, CEQ will continue to make guidance available to Federal agencies and the public through its websites.

CEQ does not anticipate the proposed action or no action alternative would have any impact on threatened or endangered species, land or water use, climate change, environmental justice communities, cultural resources, including historic properties, or any other resource category.

### List of Agencies and Persons Consulted

CEQ consulted with its internal experts, but did not consult with other agencies or persons.

### Conclusion and Finding

Based on this environmental assessment, CEQ finds that the proposed action will not have a significant effect on the environment.

### **List of Subjects in 40 CFR Part 1519**

Administrative practice and procedure, Guidance.

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Matthew Lee-Ashley,  
Chief of Staff.

**PART 1519—[REMOVED AND RESERVED]**

For the reasons stated in the preamble and under the authority of 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; E.O. 13992, the Council on Environmental Quality amends subchapter B of chapter V in title 40 of the Code of Federal Regulations by removing and reserving part 1519.

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